IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. [redacted] -6

DANIEL J. SENTILLES,

Petitioner,

v.

INTER-CARIBBEAN SHIPPING CORPORATION,

Respondent.

RESPONDENT'S BRIEF ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

GEORGE F. GILLELAND
Counsel for Respondent
1414 First National Bank Building
Miami, Florida

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Respondent, Inter-Caribbean Shipping Corporation, herein files its Brief and urges that this Court either affirm the judgment of the United States Court of Appeals for the Fifth Circuit or dismiss the Writ of Certiorari as having been improvidently granted.

QUESTION PRESENTED FOR REVIEW

The only question involved here is the question upon which the trial court's judgment was appealed:

> **"[W]hether there was sufficient evidence that the disabling illness of the appellee was caused by the occurrences on the [defendant's ship]" (R. 106).**

STATEMENT OF THE CASE

In April of 1953, petitioner—a refrigeration engineer—signed himself on as a member of the crew on respondent's vessel. Petitioner had been hired by respondent as general manager of the vessel's operations (R. 105). While at sea, petitioner fell on deck during rough weather. He was examined by doctors in Louisiana in the middle of the following month (R. 32), having left the ship within a few days after his fall (R. 15) and having gone to New York and other eastern points in the interim (R. 96).

His "family doctor" looked him over and referred him to other physicians. Not willing himself to state a "separate opinion" (R. 29) as to petitioner's condition, the doctor did state: "I do not know of any [tuberculosis] cases that were produced by trauma—" (R.30). The "family doctor" admittedly had little experience or background with tuberculosis patients and preferred to "go by the opinion of the consultant" (R. 29) that petitioner was referred to.

The consultant physician was Dr. LeDoux. He saw

Sentilles on May 1, 1953, less than a month following the incident on board ship. The doctor received a history revealing "severe diabetes" for 5 years prior, "fatigue and malaise" for 3 years prior, and "frequent attacks of hoarseness" for 8 months prior to the time of the examination. (R. 49) Upon reviewing x-rays taken of Sentilles' chest area in prior years, Dr. LeDoux found a progressive tubercular condition that was manifest in June of 1950 and that showed signs of increased infiltration into the lungs as of June 1952 (R. 51). Asked whether he thought Sentilles' fall on board ship would have "aggravated or activated" the existing condition in 1953, Dr. LeDoux unequivocably replied: "I do not think it happened" although he readily agreed that the fall could have made the symptoms worse. Again, however, the doctor said he had no record of any "sudden onset" of symptomatology as to Sentilles' condition (R. 52-53). In fact, the doctor's diagnosis was tuberculosis that was "far advanced, active one year, Class I." (R. 57) In other words, Sentilles' own doctor—and his own witness at trial—stated that the tuberculosis was active at least eleven months prior to the incident on ship (R. 57). The doctor added that the disease is a slowly developing one and that a diabetic is more susceptible to the disease (R. 57-58).

Dr. Jacobs, a specialist in TB cases, also saw petitioner in New Orleans. He did not think the disease became active at the time of the incident (R. 64). His research and studies reflected that diabetics are "inordinately susceptible [to TB] perhaps one to five times as frequently as the general population" (R. 78). His statement regarding causation is exemplary of petitioner's proof at trial: "—I would not know how to tell you which

of the two [diabetes or trauma] it is more likely was responsible in this instance" [R. 77].

Dr. London, the "expert" witness—who testified without ever seeing Sentilles—stated that the following symptoms that had been demonstrated by Sentilles for months and years prior to the incident on ship were indicative of tuberculosis or a susceptibility thereto: (1) hoarseness, (2) night sweats, (3) diabetes, (4) X-ray films showing progressive development (R. 79-82). In his opinion there existed three possible causes for petitioner's condition and he could not state "with reasonable medical certainty" which of the three was responsible (R. 83). During his sometimes evasive answers on cross-examination the trial court on two occasions summarized the testimony of this witness as being inconclusive: "He said he couldn't tell" (R. 87); "He said he can't tell whether all three of these or one of them or two of them or even other factors might have precipitated the condition —" (R. 88).

Dr. London stated repeatedly that the TB **could** have been caused by **either** Diabetes, Malnutrition or Trauma and that there was no basis for him to venture an opinion as to which **probably** caused Sentilles' illness in April of 1953 (R. 83, 84, 87, 88, 89). Highly significant is the closing portion of his testimony:

[R. 88-89]

> Q. I am asking you for a reasonable medical probability, and unfortunately that is what this lawsuit is based upon.

Mr. Kelner: The Doctor has answered this question over and over again, unless I am mistaken.

If Counsel is unhappy with the answer, that doesn't mean he has the right to continue asking for an answer.

[fol. 144] The Court: I will give him one more chance.

He said he can't tell whether all three of these or one of them or two of them or even other factors might have precipitated the condition which apparently was precipitated from the record he read somewhere about the time the first of April or May.

By Mr. Beckham:

Q. It was your testimony, wasn't it, that you couldn't place the time?

A. I couldn't place the specific date.

Q. As to the middle of April?

A. That is true.

Q. What the Judge has just stated, is that your testimony?

A. In your elucidation of the problem you asked me if the man fell on a certain day and I think you gave me a date. Based on that I can say that was the probable date.

Q. Based on your testimony yesterday from reading what the symptoms were you couldn't tell that it happened at any particular time?

A. That is true.

Q. Again what I want to find out is this: What the Judge just stated, is that your testimony, that the three causes or any one of the three might have been the cause?

The Court: I think he said, could have.

A. Any one of them could have aggravated the situation or all of them.

[fol. 145] Q. There is no way of telling which? They are all three present; isn't that right?

A. No way of my telling. I have no way of telling.

Respondent will stipulate that every medical witness testified that it was "possible" that the fall activated the tuberculosis—that such a result "could" have happened.

ARGUMENT

"[W]hether there was sufficient evidence that the disabling illness of the appellee was caused by the occurrences on the [defendant's ship]" (R. 106).

If a seaman is not required to prove medical causation by "probabilities" rather than by "possibilities" this

case should be reversed. If a seaman is required to **prove** a case, however, the case should be affirmed or the Writ should be dismissed. The point involved is that simple!

It should be accentuated at the outset that this case deals with an area outside the layman's knowledge. The medical profession—like the law—requires lengthy study and apprenticeship before admitting a graduate into its ranks. The character of medical testimony in this case, therefore, is all the more important because the jury could not possibly draw any reasonable inferences from the bare facts alone. The tuberculosis causation was a matter peculiarly within the realm of the knowledge of physicians. See *Carr* v *Donner Steel Co.*, 207 App. Div. 3, 201 NYS 604 (1923). In brief, this is no case where any person would automatically or "naturally" infer a relationship between a fall on deck and a "far advanced" case of TB. Because of the removal of the case from the "ordinary," the evidentiary rules pertaining to medical testimony were respondent's only protection at the trial of this cause. The trial court stripped much of the protective shield away but the Court of Appeals rightly restored it—at the same time holding intact the accepted standards by which such matters are adjudicated.

Sentilles was hired as a general manager of the operations of Inter-Caribbean Shipping Corporation. He signed himself on as a crew member on the voyage in question. He was working in heavy weather and fell to the decks—not an extraordinary event by maritime standards. Within a month he was diagnosed as having had active tuberculosis for a year. His own history given to the doctors is most pertinent: fatigue and malaise, night sweats, hoarseness, plus long standing diabetes. The "experts" were

unanimous in stating that these symptoms showed he had TB long before he made a crew member of himself. With all of these facts coming to light **in his own case,** Sentilles was unable to present testimony that anything occurring on the vessel **probably** had one whit to do with his unfortunate illness. Such evidence was properly held by the Court of Appeals not to comply with established law. See, *e.g.* the opinion in *Tennant* v *Peoria & P. U. Ry.*, 321 U. S. 29, 32-33, 64 S. Ct. 409, 88 L. Ed. 520, 524 (1944):

> "Petitioner was required to present **probative** facts from which the negligence and the **causal relation** could **reasonably** be inferred. 'The essential requirement is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all **reasonably** possible inferences favoring the party whose case is attacked'." [Emphasis added]

Specifically applicable to **medical** causation problems are the authorities collected and cited in the opinion of the Court of Appeals (R. 108). On point also are the comments in 32 C.J.S. 365-366, "*Evidence*" §556. A more recent decision on this legal principle is *Samanski* v *Mobile Seafood Co.*, 258 F. 2d 823 (5th Cir. 1958).

CONCLUSION

Traditionally the law has required proof rather than surmise. The "rule of medical probability" has developed over many years as a widely accepted criterion for cases involving intricate and perplexing problems relating to matters beyond the knowledge of laymen. The instant case is but another decision in the ever growing juris-

prudence solidifying this evidentiary rule that devolved through our common law heritage.

The Court of Appeals has certainly not ignored, circumvented or abrogated any of the controlling decisions of this Court. On the contrary, the citations herein affirmatively indicate that the applicable cases were considered and followed by that Court in its decision reversing the judgment of the trial court.

The judgment of the United States Court of Appeal for the Fifth Circuit should be affirmed or the Writ of Certiorari should be dismissed as improvidently granted.

Respectfully submitted,

George F. Gilleland
Counsel for Respondent
1414 First National Bank Building
Miami, Florida